Leslie v Hamilton

2024 NY Slip Op 31494(U)

April 8, 2024

Supreme Court, Kings County

Docket Number: Index No. 515743/2022

Judge: Heela D. Capell

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 19, of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 8th day of April, 2024.

PRESENT:

HON. HEELA D. CAPELL,
Justice.
---X

OMAR LESLIE,

Plaintiff,

-against-

Index No.: 515743/2022

Mot Seq # 1

ERNEST J. HAMILTON,
RYDER TRUCK RENTAL, INC.,
CLEAN-TEX SERVICES, INC.

Defendants.
---X

The following e-filed papers read herein:	NYSCEF Doc Nos.:
Notice of Motion/Order to Show Cause/ Petition/Cross Motion and Affidavits (Affirmations) Annexed	25, 26, 28-30
Opposing Affidavits (Affirmations)	32
Affidavits/ Affirmations in Reply	34
Other Papers:	

Upon the foregoing papers in this personal injury action, plaintiff Omar Leslie ("Plaintiff") moves for an order, pursuant to CPLR 3212 (a), granting Plaintiff summary judgment on the issue of liability as against Defendants Ernest J. Hamilton ("Hamilton") and Cleen-Tex LLC s/h/a Clean-Tex Services, Inc., ("Clean-Tex") and striking Defendants' affirmative defense alleging comparative negligence/culpable conduct on the part of Plaintiff.

Background

Plaintiff commenced this negligence action, alleging he suffered various injuries as a result of a rear-end collision between his vehicle, an SUV, and a vehicle owned by Ryder Truck Rental Inc. ("Ryder") and operated by Hamilton. Hamilton, Ryder and Clean-Tex interposed a joint answer, raising Plaintiff's alleged contributory negligence as an affirmative defense (NYSCEF Doc No. 6). The action was discontinued as against Ryder pursuant to a stipulation between the parties dated December 4, 2023, which was filed on December 7, 2023 (NYSCEF Doc No. 31). Plaintiff now moves for summary judgment as against the remaining defendants Hamilton, the operator of the vehicle, and Clean-Tex, Hamilton's employer (collectively, "Defendants") on the issue of liability, and to strike the affirmative defense of comparative/contributory negligence. At the time of the accident, Hamilton was employed by Clean-Tex as a delivery driver and was operating a truck that had been leased from Ryder (NYSCEF Doc No. 30, Hamilton tr at 11, lines 12-16; at 16, lines 22-25; at 17, lines 2-3).

During his deposition, Plaintiff testified that the accident occurred on October, 12, 2021, while he was in his vehicle traveling northbound on Flatbush Avenue, at the intersection of Flatbush Avenue and Avenue H in Brooklyn (NYSCEF Doc No. 29, Leslie tr at 30, lines 17-23; at 32, lines 10-15). The traffic was light at that time (*id.* at 32, lines 5-9). While approximately 300 feet away from the intersection, Plaintiff observed that the traffic light at the intersection was green (*id.* at 33, lines 18-25). When Plaintiff was approximately 100 feet away from the intersection, he observed the traffic light turn to

yellow, at which point he slowed down his vehicle and then brought it to a complete stop (*id.* at 34, lines 8-11, 15-16). According to Plaintiff, the vehicle in front of his SUV proceeded through the intersection on the yellow light, and Plaintiff's vehicle came to a gradual stop at the intersection. Three to four seconds later, Plaintiff's vehicle was struck from behind by the vehicle operated by Hamilton (*id.* at 36, lines 4-20, 21-23). The traffic light was red at the time of the accident (*id.* at 37, lines 3-6). Plaintiff testified that he was stopped before the crosswalk prior to the accident, and that the impact of the accident pushed his vehicle into the crosswalk (*id.* at 40, lines 4-8).

Discussion

Summary judgment is a drastic remedy and may be granted only when it is clear that no triable issue of fact exists, and the moving party is required to make a *prima facie* showing of entitlement to judgment as a matter of law (*see Trustees of Columbia Univ. in the City of N.Y. v D'Agostino Supermarkets, Inc.*, 36 NY3d 69, 73-74 [2020]; *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]; *see also Zuckerman v City of New York*, 49 NY2d 557 [1980]). The papers submitted in the context of the summary judgment application are always viewed in the light most favorable to the party opposing the motion (*see Marine Midland Bank, N.A. v Dino & Artie's Automatic Transmission Co.*, 168 AD2d 610 [2d Dept 1990]). If the initial *prima facie* showing has been met, the burden then shifts to the opposing party to present sufficient evidence to establish the existence of material issues of fact requiring a trial. "[M]ere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient" (*Zuckerman*, 49 NY2d at 562; *see also Vega v Restani Constr. Corp.*, 18 NY3d 499, 503 [2012], quoting *Alvarez*, 68 NY2d at 324).

"A Plaintiff in a negligence action moving for summary judgment on the issue of liability must establish, prima facie, that the Defendant breached a duty owed to the Plaintiff and that the Defendant's negligence was a proximate cause of the alleged injuries" (*Tsyganash v Auto Mall Fleet Mgt., Inc.*, 163 AD3d 1033, 1033-1034 [2d Dept 2018]). "A driver of a vehicle approaching another vehicle from the rear is required to maintain a reasonably safe distance and rate of speed under the prevailing conditions to avoid colliding with the other vehicle" (*Nsiah-Ababio v Hunter*, 78 AD3d 672, 672 [2d Dept 2010]; *see* Vehicle and Traffic Law § 1129 [a]). Thus, "a rear-end collision with a stopped or stopping vehicle establishes a prima facie case of negligence on the part of the operator of the rear vehicle" (*Drakh v Levin*, 123 AD3d 1084, 1085 [2d Dept 2014]; *see Newfeld v Midwood Ambulance & Oxygen Serv., Inc.*, 204 AD3d 813, 814 [2d Dept 2022]; *Sayyed v Murray*, 109 AD3d 464, 464 [2d Dept 2013]). This presumption can be rebutted with a non-negligent explanation for the rearmost driver's hitting the front vehicle, such as mechanical failure, unavoidable skidding on a wet pavement, or another reasonable explanation (*see Miller v Steinberg*, 164 AD3d 492, 493 [2d Dept 2018]).

Here, the Plaintiff has established his prima facie entitlement to judgment as a matter of law on the issue of liability through his deposition testimony, which demonstrated that the Plaintiff was stopped at a traffic light for at least three to four seconds before his vehicle was struck in the rear by the vehicle operated by Hamilton (*see Bruce v Takahata*, 219 AD3d 448, 449 [2d Dept 2023]; *An v Abbate*, 213 AD3d 891 [2d Dept 2023]). Thus, a presumption of Defendants' liability is created as it is undisputed that the vehicle driven

by Hamilton struck the rear of Plaintiff's vehicle while it was stationary (*see* NYSCEF Doc No. 30, Hamilton tr at 31, lines 5-6; at 31, lines 9-12; at 33, lines 7-21; at 34, line 15).

In opposition, Defendants argue that Plaintiff's negligent driving caused the collision. Specifically, Defendants contend that Plaintiff stopped suddenly after appearing to proceed through the yellow traffic light, and at the moment of impact, Plaintiff's vehicle was stopped beyond the area where vehicles are required to stop (NYSCEF Doc No. 32, ¶ 7). In support of this contention, Defendants rely on Hamilton's deposition testimony. Hamilton testified that on the night of the accident, he was driving his vehicle at the speed of 20-25 miles per hour on Flatbush Avenue, toward the intersection of Flatbush Avenue and Avenue H (NYSCEF Doc No. 30, Hamilton tr at 27, lines 9, 22-24). About a quarter of a block away from the intersection, Hamilton observed that the light at the intersection was green (*id.* at 28, lines 3, 13-14). Proceeding about 20 miles per hour, Hamilton noticed a black SUV (Plaintiff's vehicle) in front of his vehicle (*id.* at 28, lines 20-25; at 29, lines 2-3). According to Hamilton, his vehicle was a car-length distance behind the black SUV (*id.* at 29, lines 22-25). He claimed that he was "right on the light" when the traffic light at the intersection turned from green to yellow, while Plaintiff's vehicle was "about to pass through the light" (*id.* at 30, lines 9-14). At that point, Hamilton claimed that he tapped his foot on the brake (*id.* at 30, lines 15-19). Right after he tapped his brake, the brake lights of Plaintiff's SUV in front of him came on (*id.* at 31, lines 2-6). According to Hamilton, Plaintiff was "pretty much at the intersection at that time" when he (Plaintiff) "stopped and then he started again and then he stopped again" (*id.* at 31, lines 5-6, 22-23). Hamilton then explained: "[w]ell, he [Plaintiff] didn't stop. He slowed down and then I guess he was going

to proceed through the yellow light and then I guess he changed his mind and stopped" (*id.* at 31, lines 9-12). Upon observing the Plaintiff's vehicle slow down, Hamilton claimed he hit the brakes, but subsequently took his foot off the brake after seeing the brake lights on Plaintiff's vehicle go off (*id.* at 32, lines 17-22, 25; at 33, lines 2-6). Then, while the traffic light was still yellow, and while traveling at the speed of approximately 15 miles per hour, Hamilton observed Plaintiff's brake lights go on again, at which point he (Hamilton) applied his own brakes again. Hamilton testified that at the time he applied the brakes, although his vehicle was still approximately a car's length away from Plaintiff's SUV, it skidded approximately ten feet, coming into contact with the rear of Plaintiff's vehicle, which was stationary at the time (*id.* at 33, lines 7-21; at 34, line 15). After the impact occurred, Hamilton claimed Plaintiff's vehicle passed the crosswalk at the intersection, while the front of Hamilton's vehicle was at the start of the crosswalk (*id.* at 35, lines 17-19, 23-25).

Contrary to defendants' assertion, they have failed to raise an issue of fact. In fact, Hamilton's testimony corroborates Plaintiff's position that his vehicle was slowing down as it approached the intersection, rather than accelerating, and came to a complete stop seconds before being struck in the rear by the vehicle operated by Hamilton. Defendants' reliance on *McAvoy v Eighamri*, (219 AD 3d 604 [2d Dept 2023]) is unavailing, as the Defendant in that case was able to establish that Plaintiff "accelerated in an attempt to beat a yellow traffic light and then came to a sudden stop," which did not occur here (*id.* at 605). Even if Hamilton's testimony had established that Plaintiff's vehicle stopped abruptly, standing alone, a sudden stop is "insufficient to raise a triable issue of fact as to whether

there was a nonnegligent explanation for the collision" (*Catanzaro v Edery*, 172 AD3d 995, 997 [2d Dept 2019], citing *Edgerton v City of New York*, 160 AD 3d 809, 811 [2018]; *Robayo v Aghaabdul*, 109 AD3d 892, 893, [2d Dept 2013]). Sudden stops foreseeable under the prevailing traffic conditions do not raise a triable issue of fact as to the non-negligent explanation for the collision because they must be anticipated by the driver following another vehicle, who has a duty to maintain a safe distance from the driver ahead (*see Williams v Isaac*, 224 AD3d 719, 719 [2d Dept 2024], citing *Nsiah-Ababio*, 78 AD3d at 672; *Arslan v Costello*, 164 AD3d 1408, 1409-1410 [2d Dept 2018]; *Waide v ARI Fleet, LT*, 143 AD3d 975, 976 [2d Dept 2016]; *Taing v Drewery*, 100 AD3d 740, 954 [2d Dept 2012]; *see also* Vehicle and Traffic Law 1129 [a]). Thus, Defendants have failed to provide a "non-negligent explanation" for the collision to rebut the inference of negligence (*see generally*, *Tutrani v County of Suffolk*, 10 NY3d 906, 908 [2008] [holding "(t)hat a negligent driver might be unable to stop his or her vehicle in time to avoid a collision with a stopped vehicle (is) a normal or foreseeable consequence of the situation created by the (lead vehicle)"]).

Additionally, the court finds that the Plaintiff is also entitled to summary judgment dismissing the defendants' affirmative defense alleging comparative negligence/culpable conduct on his part. "[A] Plaintiff moving for summary judgment dismissing a Defendant's affirmative defense of comparative negligence may seek to establish freedom from comparative fault as a matter of law" (*Newfeld*, 204 AD3d at 813-814). Here, the parties' deposition testimony established that the Plaintiff was not at fault in the happening of the accident (*see Tenezaca v State of New York*, 220 AD3d 959, 961 [2d Dept 2023]; *Mahmud*

v Feng Ouyang, 208 AD3d 861, 862 [2d Dept 2022]; *Poon v Nisanov*, 162 AD3d 804, 808 [2d Dept 2018]). In opposition, the Defendants have failed to raise a triable issue of fact.

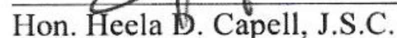
Conclusion

Accordingly, it is hereby

ORDERED that Plaintiff's motion (mot. seq. no. 1) for summary judgment as to liability in his favor as against Defendants, and for dismissal of Defendants' affirmative defense of comparative negligence is granted in its entirety.

This constitutes the decision and order of the Court.

E N T E R,



Hon. Heela D. Capell, J.S.C.

Dated: April 8, 2024

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